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Opinion of the Court of Appeals
Reversing the Decision of the
Circuit Court of Trigg in
M. G. Radford's Case.

KENTUCKY COURT OF APPEALS,
Sept. 15th, 1887.

Miles G. Radford, Appellant, vs.
Commonwealth of Kentucky, Ap-
pellée; Appeal from the Trigg Cir-
cuit Court.

Opinion of the Court delivered by

Judge Holt:

The appellant, Miles G. Radford, stands convicted of man-slaughter for the killing of Henry D. Johnson. Unlike, as is usual in such cases, there is not much conflict of testimony. The deceased was the tenant of the accused. He had upon the farm of his landlord some corn, and was indebted to him for rent. A few days before the killing, but at different times, each of them went to a certain neighbor, and he, at their instance, agreed to go to the farm the next day and settle the matter between them. About sunup, however, the next morning the deceased was seen in his team, and in company with the accused, walking along the road to get the corn. The attention of the accused was called to it by some of his family, and as he passed through the hall in going out of the house to where Johnson was, he picked up a gun, which, as the testimonies show, had been lately brought to the house by his grandson, and which, as the accused says, was there without his knowledge. He testified that he did not take it with any purpose of shooting the deceased—and only upon the idea of protecting himself if it became necessary, from violence at the hands of Johnson, who was a man in his middle life, while the accused was crippled in his right hand, and then seven or four years of age. Upon getting out of the house, he motioned to or told the deceased to stop and the latter did so. Some conversation then occurred, the substance of which was that the deceased announced his purpose to get the corn, while the accused asked him to secure him in his rent, or to wait until their neighbor settled the matter between them as they had agreed he should do. During this conversation, the deceased made one or more unsuccessful efforts to get hold of the gun, and to withdraw it from the accused, saying that he had been advised that he could take all of the corn, and that he was going to do so. He then started in his wagon toward the cornfield, the accused walking along in front of the team, while the two grand-daughters, of the latter, at his request, followed behind the wagon.

There is some evidence that the accused, while on the road to the field, tried to persuade the deceased to turn back. He says that he had no purpose in going to the field or in taking the gun to attack Johnson; but to forbid him from entering the field, and if he still persisted in entering, to stop him. The latter attachment when he began to do so. When they arrived near the field the accused stopped upon the side of the road while the deceased drove by him and up to the corn-field fence, held up the reins to him, and at once jumped out of the wagon, and, with his wits in his hand, started back directly toward Radford. The latter warned him once or more not to come any nearer to him, but he persisted; and when within seven or eight feet of the accused, he shot him.

There is some evidence tending to show that as Johnson so advanced he put one hand behind him as if to draw a pistol; and the testimony shows that he was a dangerous, determined man.

Upon the cross-examination of the accused, and also of his grand-daughter, the Commonwealth was permitted over the objection of the defendant to ask them if the wife of Johnson was not just as guilty as he. The wife was shot to him and smote her hands and arms with his blood; and an affirmative answer being given, the Commonwealth then introduced the widow, who testified that she did not do so.

This was an immaterial matter; and it is well settled that a witness cannot be examined upon a subject not relevant to the issue for the mere purpose of contradicting him.

Starkie on Evidence, 200.

Mr. Starkie says: "A witness is not to be cross-examined as to any distinct collateral fact for the purpose of afterward impeaching him."

Starkie on Evidence, 200.

The rule is admitted by an unbroken line of decisions, among which are Nation vs. People, 6 Par-

ker's Crim. Reports, 32, Hildebrand vs. Winchester, 39 N. H. 13, Harper vs. R. R. Co., 47 No. 567, Cornelius vs. Comwith, 15 B. M. 539, and Ken-

nedy vs. Comwith, 14 Bush 340.

The rule is admitted by the able

Attorney General in this case; but it is urged, that the witnesses were otherwise contradicted by Mrs. Johnson, and that the accused could not have been prejudiced by the admission of the testimony.

A court should not assume in a case involving life or liberty that the accused's testimony has not operated to the defendant's prejudice unless this is clearly so. It is dangerous ground upon which to tread; and if it be the least doubtful, it is true that Mrs. Johnson contradicted these witnesses in some other matters; but a careful reading of the testimony shows that in the main they agree as to the material facts of the case. The contradicting witness was the widow of the deceased; and the contradiction was of a peculiar character, and well calculated to create discredit and avarice feeling. Under such circumstances we cannot undertake to say

that it did not affect the accused pre-judicially. Upon the contrary, it is reasonably probable that it did and the action of the trial court in this respect was erroneous.

The third instruction given to the jury reads thus: "If the jury believe from the evidence that at the time of the killing, M. G. Radford, shot and killed Henry D. Johnson, he did so shoot and kill him." As the said Radford not being himself the attacking party in said encounter, yet had reasonable grounds to believe, and did in good faith believe, his life was then in danger, or that his person was then in danger of great bodily harm from violence then about to be inflicted on him by said Johnson, then said Radford under his right of self-defense had the right to use such means as were within his power for his own protection; and this right may even extend to taking the life of his adversary when the danger, real or apparent, is imminent, impending, or imminent, and provided, however, that the life of his adversary has no other safe means of avoiding such danger and protecting his life or person—the danger to ones person may be either real or apparent."

This instruction is erroneous in two respects. The qualification—"he, the said Radford not being himself the attacking party" is both abstract and misleading. The jury may have thought that the mere taking of the gun along by the accused amounted to an attack upon the deceased; and even if it might possibly under the circumstances be true, the next morning the deceased was seen in his team, and in company with the accused, walking along the road to get the corn. The attention of the accused was called to it by some of his family, and as he passed through the hall in going out of the house to where Johnson was, he picked up a gun, which, as the testimonies show, had been lately brought to the house by his grandson, and which, as the accused says, was there without his knowledge.

The evidence does not disclose any effort, however, upon the part of Radford to use the gun until Johnson advanced upon him. One was a man six feet high, weighing over 160 pounds, dangerous and determined in the prime of life, while the other was a crippled old man. Under the rules of law on the record, the accused is entitled to self-defense; and this instruction only allowed the accused to act in his own defense, provided there was no other safe means of avoiding the danger.

The verdict is unanimous.

W. D. Sult, Druggist, Bippus, Ind., testifies: "I can recommend Electric Bitters as the very best remedy. Every bottle sold has given relief in every case. One man took six bottles, and was cured of Rheumatism of 10 years' standing." Abraham Hare, druggist, Bellville, Ohio, affirms: "The best selling medicine I have ever handled in my 20 years' experience, is Electric Bitters. I can recommend Electric Bitters to any one that has aches and pains in the body, and to those that have had rheumatism for years. I can assure you that Electric Bitters do cure all diseases of the Liver, Kidney or blood. Only a half dollar a bottle at Harry B. Garner's City Pharmacy.

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Snow is eight inches deep in Michigan.

Adairville claims to be on the verge of a boom.

The C. & O. Road has been put in the hands of Mr. W. C. Wickham as receiver.

Samuel G. Whitaker, the champion bicyclist who rode 323 miles in one day, evidently moved on the wheels of time.

Several exchanges are in possession of the fact that the President has returned from his trip, and are at this late day, announcing it.

Three prisoners escaped from the Russellville jail one night last week, by sawing out the bars in their window, and are still at large.

Mr. Stealy says the outlook in New York is growing brighter every day, and that the Democratic plurality will be from 15,000 to 20,000.

About sixty distillers in the State have signified their intention not to make any whisky in 1888, and have signed a contract to that effect.

The Western Union Telegraph Co. does not send any messages now for less than 25 cents. The highest charge has not been made public yet.

The latest sensation from Chicago is that an Anarchist plot to blow up the jail is on foot, but precautions are being taken to prevent further evasions.

The Cincinnati Telegram says if the police insist on raiding the gambling places the reputation of her best citizens are bound to suffer. Let them join the Y. M. C. A.

This evening, Gov. Buckner will present to the Louisville Legion at the Armory, the first-prize gold medal won by the Legion at the recent International Drill near Chicago.

At the last term of Warren Circuit Court, held at Bowling Green, fifteen violators of the law were sentenced to the penitentiary, and will at once enter upon a steady job for the State.

The church at Xenia, O., should not have expelled Rev. H. M. Keck for the trivial offense of stealing a flat iron. He probably needed just such an implement to smooth the dissensions among his members.

Kentuckians who visit Kansas say that Prohibition is a failure in that State, and that there is more whisky and beer sold and consumed there than in States where the law provides for the manufacture and sale of it.

On next Tuesday, Ohio, Minnesota, Massachusetts, Pennsylvania, Maryland, Virginia, New York, Iowa and two or three other States will elect State officers. The principal contests will be in New York, Virginia and Ohio.

Gov. Taylor, of Tennessee, has gone to Ohio to put his weight on the Democratic beam that will raise the majority at the State election. If there is anything in the importation of able speakers, Ohio Republicans will be swamped.

Bob Garrett may be a little off in the upper story, but it is very evident that he has a very clear and a very correct conception of the character and motives of one Jay Gould, who administered on Mr. Garrett's personal estate a few days ago.—Times.

Alfred Stone, the only survivor of the propeller Vernon, that was lost on Lake Michigan last Friday, says that all of her crew went down with the vessel. When Stone was rescued he had been on a raft for sixty hours exposed to cold, and was almost helpless.

An exchange heads an article: "Married the Wrong Woman." It is often the case that a fellow marries the wrong woman and pays dearly for it too. If you don't believe it just read an issue of the Police Gazette, and all doubt will be removed from your mind.

Ephraim Lemley, aged 92, recently married a lady of sweet (?) 80, in South Arkansas. This makes six hazardous ventures made by the venerable old gentleman, who has twenty-three living children. His well-wishers have adjourned, to allow a rest before again congratulating the already much felicitated old man.

The State of Indiana has filed suit against the State of Kentucky, in the United States Supreme Court, for possession of Green River Island, near the mouth of Green River in the Ohio. Notice has been served on Gen. Buckner and Gen. Hardin to appear on the first Monday in January, 1888, when the suit will be called.

H. S. Pierce, son of Representative Pierce, of Logan County, Ill., is suffering from glanders contracted in Northwest Missouri, in June last. The young man had some horses affected with what was supposed to be distempers, and in smoking them broke the skin upon his left hand. Some time thereafter a sore developed upon his hand, which was followed by running sores upon the arm, leg and ankle. Dr. Rauch, of the State board of health, has made a close examination, and pronounced the disease to be glanders in a mild form.

EDITORIAL CORRESPONDENCE.

LOS ANGELES, CAL., Oct. 24.—The city of Los Angeles is situated fourteen miles from the ocean, on a small river which bears the same name. When the census of 1880 was taken, the place had only a few thousand inhabitants and was a town of but little importance or promise. To-day it has 60,000 residents and as many more transient sojourners. For five years the city has been growing with astonishing rapidity, and property has enhanced in value until the prices asked are no longer within the bounds of reason. The boom turned on with a full head of steam and the real estate men have been in their glory for the last year or two. Those who invested in real estate early enough made big money, but I am inclined to believe that the boom has reached the top notch and has already begun to subside. I noticed in yesterday's reports that a lot heretofore held at \$2,300 had been sold at \$2,000, and I was told of another instance where a lot was sold for \$1,000 which was refused at \$1,300 not long ago. The prices on many building lots with 50 feet front go as high as \$8,000 or \$10,000, and in the business part of the city real estate is worth thousands of dollars per front foot. It is hard to get any kind of a residence lot, even in undesirable portions of the city, for less than \$1,000. Of course this state of affairs can't last, and when the boom has subsided the same lots can be had at reasonable prices. Many of the owners are foolish enough to post the prices at which lots are valued, and the assessors get a fair sweep at them when he comes around. That much dreaded official makes his annual visits in boom towns as well as in the less fortunate parts of the country, and it takes only a few assessments to make an inflated valuation with like a frosty tomato vine. The boom is kept up now by the real estate agents, who are as thick as autumn leaves in Lambrosa. You can't turn anywhere without running against a dozen or two of them. They have their offices on every street and in every nook and corner. Some store rooms are divided into apartments like the stalls in a livery stable, and in each one you will find a chair, a table and a real estate agent. Corners are cut off in barber shops, cigar stands, drug stores and all other kinds of business houses, to be occupied by the gentlemen who tell you that the prices of property have but just begun to advance, and that now is the time to buy, before the boom gets fairly on. You will find them in basements, down stairs and up stairs, on main streets and on side streets, in the business portions of town and in the suburbs, everywhere and at all times, from early dawn till late at night. They advertise in every conceivable manner. The papers are filled with real estate for sale, the bill boards are covered, and there are enough planks stuck up on vacant lots to fence in the town. This all impresses the observer with the idea that buyers are not as plentiful as they have been, and that now would be a first-rate time to let property go. Some of the shrewd agents realize this and are booming suburban towns. No less than a dozen little places have been laid off within a radius of fifteen miles of this city, and the lots are being put on the market at unreasonable figures. Town lots have been staked off for miles in these paper towns, which have as yet less than a dozen houses. Not only is this true, but all of the land between the city and these villages has been divided up into small lots, which if they are ever built upon will make Los Angeles the largest city on the continent. Some of the agents get the exclusive right to boom one of these little towns. In the city it is a free for all fight. Every agent is trying to sell every lot, and the man who makes the sale at the price fixed by the owner, rakes in the commission of 5 per cent. on the first thousand, and 2½% on each subsequent thousand. At this rate the agent who makes a sale of a \$5,000 lot gets \$100; and all the capital needed to go into business is an office large enough for a table and a chair, a handful of cards, a map of the city, a plug hat and a bunch of "gall." Some of the toniest ones have a carriage at hand to show strangers around town. They extend their courtesies to any strangers who call on them, whether they want to buy property or not. They go upon the principle that all strangers who are shown over Los Angeles fall in love with the place and either decide to locate here or go back to their homes walking advertisements of the place. And our corner lot friends are seldom mistaken in their calculations. One only needs to see the beautiful city of Los Angeles to arrive at the conclusion that it is a most delightful place to live, and a city with great possibilities for the future. The place is as yet more like a great overgrown town. There are very few houses more than three stories high, and many of the merchants are still doing business in the original one-story frame houses put up before Los Angeles began to aspire to the importance of a city. The city is mostly in a level valley, but there are some hills on one side which are being dotted all over with fine houses. This property is the dearest in the city, as the fogs are not so bad on elevated places, and the ocean breeze is felt at all hours, cool and fresh. Fogs are one of the objectionable features of this "glorious climate of California." The fog this morning for instance amounts almost to a drizzle, and if I were in Kentucky I should predict rain before night. But the inhabitants tell you that they had rather have the fogs than not, as they settle the dust and moisten the

GENERAL NEWS.

growing plants. The temperature here is very mild and free from sudden changes. It has ranged from 64 to 90 degrees since I have been here, and the people say the heat is rarely ever greater than at this season. It never gets cooler than 28 degrees, and vegetables and fruits grow the year round. Tomato vines are never killed down, but live and bear for years. Fruits ripen every month in the year. I saw two pear trees in a yard, side by side, and one was loaded down with ripe fruit and the other in full bloom. All of the semi-tropical fruits grow here, including bananas and dates, which are to be seen in the yards in all stages, from the blossom to the full grown fruit. The year is divided into the rainy season and the dry season. The rainy season begins about November 1st, and occasional rains fall until May 1st, when the dry season sets in. Irrigation is necessary in order to make the country productive, and many California lands are almost worthless because no water can be had. Los Angeles is well supplied with water and there are no serious drawbacks of any character to her permanent and enduring prosperity.

There seems to be very little piety or morality about the place. Sunday is no more than any other day, and saloons, theatres and many business houses were in full blast yesterday, and the crowds on the street were as great as on week days. The city is dotted over with churches, but the crowds around the beer gardens and such places are much larger than any of the churches can bring out. The Salvation army parades the streets every evening, but it does more harm than good, as it brings religion into ridicule. I should think Los Angeles a good place for the missionaries of all denominations to put forth their best endeavors.

Nearly everything is higher here than in the east, but hotel rates are reasonable enough. Good board can be had at \$7 per week at many of them, and at from \$4 to \$6 in private boarding houses. The best hotels charge from \$3 to \$5 a day, and the cheapest restaurants charge 15 cents for a meal.

Rents are very high, but wages are about double what they are in Hopkinsville. Plumbers are paid \$7, carpenters \$4, masons \$5, factory workmen \$3 to \$4, and common laborers \$2 50, and all kinds of workmen are in great demand.

Building is very expensive, but a great deal of it is going on. I stood on one hill and counted twenty-five houses in process of erection. On every street buildings of every character are going up, and two half million dollar hotels and a few court houses will be started as soon as the contracts can be let. If some of the 700 real estate agents of the place would quit the booming business and go to building, Los Angeles would be better off by the end of the year.

I am finishing this letter on the train en route to San Diego. I am passing through a beautiful valley of farm lands and vineyards and every time I glance out of the window I can see dozens of ground squirrels scampering about over the vacant fields.

C. M. M.

Hall's

There is more Cataract in this section of the country than all other districts put together, and until the last few years was supposed to be incurable. For a great many years Doctors pronounced it a local disease, and prescribed local remedies, and by constantly failing to cure with local treatment pronounced it incurable. Science has proven Cataract to be a constitutional disease, and the best treatment is constitutional treatment. Hall's Cataract Cure, manufactured by F. J. Cheney & Co., Toledo, Ohio, is the only constitutional cure now on the market. It is a teaspoonful in doses from ten drops to a teaspoonful, acts directly upon the blood and mucus surfaces of the system. They offer one hundred dollars for any case it fails to cure. Send for circular and testimonials. Address, F. J. CHENY & CO., Toledo, O.

Sold by Druggists, 75 cents.

Cataract Cure.

The following from an Arkansas paper is also applicable to some other States and counties where "Prohibition" exists, and shows that Prohibition laws, unless rigidly enforced, can increase an interest in the use of mean whisky and other poisonous slops.

"When men buy liquor in small quantities and in a legitimate way, they drink very little. When it is a feast or a family" they are sure to take too much when the festal day comes around. It is quite a common occurrence for men to assemble in a cellar or a back room, and sample bottled beer or take heavy swigs from a whisky bottle. And nine times out of ten when the party breaks up they are under the influence of the stuff.

If men could enter a place and take a single drink they could go on about their business. Another drawback to prohibition is, dealers take advantage of the law and handle villainous decoctions. Many times the stuff is actually poisonous. Prohibition is without question a failure in Arkansas City."

The action of President Cleveland in contributing \$1,000 to the N. Y. Campaign fund, is eliciting some little comment from a certain class who seem to know what the President should or should not do. These fellows are just wasting their time and remarks on Cleveland, for his actions should predict rain before night. But the inhabitants tell you that they had rather have the fogs than not, as they settle the dust and moisten the

GENERAL NEWS.

There are 100 girl students at Cornell University.

Jay Gould wears a Derby hat left over from last season.

Frank Stockton's "The Lady or the Tiger" is to be dramatized.

A steam mill and a brewery are now running in Jerusalem.

The old Bull Run battlefield is a favorite resort for sportsmen.

A high class college for women is to be established at Denver.

Two hundred colored people will leave Nashville this month for Liberia.

Mrs. Gardin, a daughter of Theodore Tilton, is now living in her Chicago home.

Jefferson Davis will be asked to take the stump for the Anti-Prohibitionists of Georgia.

The people of Siberia buy their milk frozen around a stick, which serves as a handle.

It is said that the late James B. Eads once received \$20,000 for a professional opinion.

Princess Beatrice, of England, is reported as suffering martyrdom from rheumatism.

Germany has eight bachelor heirs to thrones, the eldest 55 years old, the youngest 18 years.

The cobblers of Natick, Mass., are about to erect a monument to the late Vice President Henry Wilson.

The President's visit to Chicago is estimated to have cost the citizens of that ambitious town \$250,000.

A cucumber four feet long, coiled like a serpent, was among the vegetable curiosities at a recent Pennsylvania fair.

The railroads built and to be built this year aggregates 12,000 miles, calling for an investment of \$300,000,000.

Dr. Howard Crosby holds that the drunkard should be punished as well as the rumsealer. That is his temperance platform.

Miss Ethel Sprague, daughter of Kate Chase Sprague, and granddaughter of Chief Justice Chase, is ready for the stage.

J. Q. A. Ward has been selected as the sculptor for the Beecher monument, for which a fund of \$25,000 is already subscribed.

Emperor Francis Joseph, of Austria, is to have a little jubilee of his own next year. He has kept a throne down for forty years.

The market price of a letter written by George Washington is \$25, while an epistle from the hand of George D. Prentiss brings \$50.

A granite shaft in memory of the Confederate Gen. "Job" Stuart is shortly to be erected near Yellow Tavern, Va., where he was killed.

A farmer who saw his family arrayed in new hats, exclaimed: "There goes my wife and daughter with thirty bushels of rye apiece on their heads."

Jesse Grant is likely to become the richest member of his family through his interests in the Lake Superior iron mines. He may yet become an iron king.

A watch stolen from a Wilkesbarre lady seventeen years ago was returned to her recently by a Catholic clergyman, who received it in the confessional.

A number of the Leadville miners on Carbonate Hill will soon be using oil as fuel to run their engines. The oil comes from the wells in the same locality.

William Copeland, a young colored man, is a Republican candidate for a seat in the Ohio legislature. His father was a colleague of John Brown of Harper's Ferry fame.

Ex-Attorney General Brewster attended a theater for the first time in years a few nights ago in Philadelphia. His costume was as picturesque as any on the stage.

The statue of Garibaldi, the gift of the Italian societies to the city of New York, will be erected in Washington Square, instead of in the Central Park, as at first intended.

Miss Muller, a member of the London School board, who is at present traveling in this country, obligingly says that the United States is certainly the earthly paradise of women.

Roscoe Conkling has been strongly urged to take part in the New York campaign in behalf of the son of his old friend, but so far has given no evidence of his intention to do so.

Twenty years ago it cost \$16 to send ten words by wire from Portland, Me., to Portland, Ore. The "circular wheel" will now pay the transmission of such a message between these points.

An Indian Spring (Florida) woman has a hen that is covered with hair instead of feathers. It lays and has hatched chickens coated like herself, but they invariably die in infancy.

Queen Emma, of Holland, is a beautiful woman whose eyes would be very pretty did she not continually wink when speaking, thus giving you the impression of preparing for a good burst of tears.

The American Consul at Malta says as a fact, which he thinks capable of much improvement, that only one of over 3,600 merchant vessels that arrived at the island carried the United States flag.

An overcoat worn by a passenger on the Aurora at New York on Wednesday was examined by a suspicious customs inspector. It yielded 14½ yards of silk, 8½ yards of velvet and 18 pairs of gloves.

It is said that the richest pensioner in the United States is Col. A. Andrews, of San Francisco, a wealthy

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